Supreme Court, U.S.
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No. 01-522

In The

Supreme Court of the United States

SHEA ZELLWEGER and ALEIDA H. ZELLWEGER,

Petitioners,

vs.

THE CITY OF ALLIANCE, OHIO,

Respondent.

On Petition For A Writ Of Certiorari To The Fifth District Court Of Appeals, State Of Ohio

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the City of Alliance's exercise of eminent domain power over petitioners' property is rationally related to a conceivable public purpose.

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Pursuant to United States Supreme Court Rule 15, respondent, the City of Alliance (the "City"), hereby submits this brief in opposition to the petition for a writ of certiorari.

STATEMENT OF THE CASE

A. Procedural History

Respondent, the City of Alliance, filed a petition to appropriate petitioners' property on August 30, 1999. Petitioners filed an answer on November 8, 1999 denying that the appropriation served a public purpose and the trial court held an evidentiary hearing on this question on December 10, 1999. On December 21, 1999, the trial court ruled that the City had not abused its discretion in determining that the appropriation served a public purpose.

A trial was held on the issue of compensation for petitioners' property on February 22, 2000. The jury entered a verdict in favor of petitioners in the amount of $125,000.00, and judgment was entered on that verdict on March 3, 2000. The judgment amount was subsequently paid to petitioners. Pet. App. p. 7a. The Ohio Court of Appeals affirmed the trial court's judgment on March 13, 2001. On June 27, 2001, the Ohio Supreme Court declined jurisdiction to hear the case, stating that it did not involve any substantial constitutional question.

Petitioners filed a petition for a writ of certiorari to the Ohio Court of Appeals with this Court on September 25, 2001.

B. Statement of the Facts

On February 1, 1999 and August 16, 1999, after an extended planning process, the Council of the City of Alliance ("Council") authorized eminent domain proceedings for certain parcels of real estate, including petitioners' property, in connection with the construction of new and expanded facilities for the Alliance Community Hospital (the "Hospital"). The Hospital is operated by the Alliance Citizens Health Association, Inc. ("ACHA") in facilities which until 1999 were leased from the City of Alliance (the "City"). The planning process commenced in August 1997, when the Hospital developed a strategic plan which included planning for new and expanded hospital facilities. The plan, developed in accordance with the recommendations of engineers and architects, contemplated a need for 20 or more acres if the project went forward on the present site of the Hospital, or 40 or more acres if it went forward on a new site.

In September 1997, Hospital management met with hospital architects from Kaplan McLaughlin Diaz (KMD) regarding alternatives for the project. KMD prepared a report entitled Strategic Facility Alternatives to assess the various options available. The report focused on three alternatives, one of which contemplated using the present site of the Hospital, and two of which contemplated using alternative sites. In early 1998, the Hospital informed the

public of the various alternatives which it was considering for the new project.

City of Alliance officials became closely involved with the planning process and concluded that the public welfare would best be served by the Hospital remaining in its present location. Councilman Michael Ogline was appointed to the Board of Hospital Commissioners and met with the Hospital and other interested parties on numerous occasions to review various hospital project proposals. Ogline concluded that keeping the Hospital at the present location, as opposed to alternative sites on the outskirts or outside of the City, benefited the public welfare for a number of reasons. One reason was the fact that the present location is centrally located and therefore provides convenient access from all areas of the City. Moving the Hospital to a site on the edge of the city would provide poor access for citizens on the other side of the City.

Another consideration was to prevent the development of a blighted area immediately adjacent to Mount Union College, with resulting negative consequences for that neighborhood, the college and the City as a whole. A blighted area presently exists just to the northeast of the Hospital's present location. If the Hospital moved, it would result in numerous related businesses also moving, and would leave the various hospital buildings and buildings of related businesses vacant. It was considered unlikely that appropriate alternative uses would be found for these buildings, which would become blighted, and would increase the likelihood of blight creeping from a present blighted area to the northeast into the area surrounding the Hospital.

A further consideration was that retention of the Hospital at its present location would provide an economic boost to an area which the City wanted to ensure remained a viable business location.

As a result of these various considerations, the City prevailed on the Hospital to pursue its expansion project at its present location. The Hospital, in conjunction with architects and engineers, considered numerous proposals regarding the property that would be needed for the various facilities that it was planning. These facilities included a new hospital building, a skilled nursing facility, a medical office building, an orthopedic and wellness center and a new power plant, as well as renovation of existing facilities. Councilman Ogline and other City officials met with Hospital officials and other interested parties extensively during this process. The architects advised the Hospital that 20 acres or more would be required for the project. After extensive consideration, properties sufficient to allow for the required area were identified and the plan was presented to Council. This plan included petitioners' property, which is the subject of this case.

On October 26, 1998, Council enacted Ordinance No. 119-98S which authorized the sale of the City's interest in the Hospital's facilities to ACHA for $4,177,000.00. Council designated the Greater Alliance Development Corporation ("GADC") to act as its agent in the transaction. The ordinance required that the deed of transfer contain a reversionary interest for the City if ACHA should fail to operate an acute care hospital within the corporate limits of the City or if ACHA failed to commence the construction of a $25,000,000 health care facility within three years

from the date title is conveyed by the City. On January 6, 1999, GADC entered into a sales agreement, conditioned on the City's successfully conducting eminent domain proceedings to acquire properties necessary for the hospital redevelopment project.

On February 1, 1999, Council adopted Resolution No. 15-99 which declared the necessity and intent to appropriate real estate adjacent to the Hospital, including petitioners' property, for purposes of urban renewal and redevelopment, to create and preserve jobs, and specifically for the construction of a new and expanded health care facility.

On February 16, 1999, Council adopted Resolution No. 21-99 which approved a redevelopment agreement between the City and ACHA. The redevelopment agreement provided in great detail for the development of a new hospital facility at the Hospital's present location and on land immediately adjacent thereto. The redevelopment agreement also provided that the City would acquire by eminent domain those additional properties needed for the new hospital facility. The redevelopment agreement was executed on March 4, 1999. The GADC, acting as the City's agent, then transferred the City's interest in the Hospital to ACHA on March 26, 1999, subject to the above-described reversionary interest.

On August 16, 1999, the Council enacted Ordinance No. 118-99 reciting that the City had been unsuccessful in obtaining certain real estate referred to in Resolution No. 15-99, including petitioners' property, and authorizing appropriation of such real estate, for purposes of urban renewal and redevelopment, to create and preserve jobs

and specifically for the construction of a new and expanded hospital.

C. The Trial Court's Decision

The trial court applied the rule that a municipal legislative body's determination as to what constitutes a public municipal purpose may not be reversed unless manifestly arbitrary or unreasonable. Pet. App. p. 36a, Conclusion of Law ¶8. The trial court held that the City of Alliance had demonstrated that the taking of petitioners' property served a public purpose in that it would be utilized in the redevelopment and expansion of a hospital for the public health of the citizens of Alliance and its environs. Pet. App. p. 40a, Conclusion of Law ¶17. The trial court noted that the City retained a reversionary interest in the event that the construction of new hospital facilities did not commence within a three year period. Pet. App. pp. 32a-33a, Finding ¶19 and p. 40a, Conclusion of Law ¶16.

D. The Court of Appeal's Decision

The Ohio Court of Appeals concluded that the Ohio and United States Constitutions both require that the power of eminent domain be exercised for a public purpose, and that a legislative body's determination to appropriate property could be reversed only upon a showing that it was unreasonable, arbitrary or unconscionable. Pet. App. p. 12a. The court of appeals found that there was no merit in petitioners' assertion that the City's utilization of eminent domain to improve hospital

facilities for the good of the Alliance public was unconstitutional. Pet. App. p. 14a. The court of appeals pointed to the undisputed fact that the matter involved a city of well over 20,000 residents, which was host to an institution of higher learning and numerous industries but was served by only one acute care hospital facility. Pet. App. p. 14a.

REASONS FOR DENYING THE WRIT

I. THE STATE COURT'S RESOLUTION OF THE FEDERAL QUESTION PRESENTED DOES NOT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT

A. The City's Compensated Taking Of Petitioners' Property For A Hospital Redevelopment Project Was Rationally Related To A Conceivable Public Purpose.

Review of the Ohio Court of Appeals' decision in this case is not merited because its resolution of the federal question presented does not conflict with relevant decisions of this Court. U.S. Supreme Court Rule 12(b). Petitioners dispute whether the City's taking of their property complies with the Public Use Clause of the Fifth Amendment, made applicable to the states under the Fourteenth Amendment. U.S. Const. Amendments V and XIV. The Fifth Amendment provides in pertinent part that: "No person shall * * * be deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. Amendment V.

The power of eminent domain has been exercised in this case pursuant to authority conferred upon Ohio municipalities by Sections 3 and 10 of Article XVIII of the Ohio Constitution. *State ex rel. Bruestle v. Rich,* 159 Ohio St.13, 32 (1953). The Ohio Supreme Court has held that "No provision of the Constitution of Ohio authorized the interference by general laws with the exercise of the power of eminent domain, to the extent that such power is granted to municipalities by Sections 3 and 10 of Article XVIII of that constitution." *State ex rel. Bruestle,* 159 Ohio St.13, paragraph nine of the syllabus.

Petitioners make no argument that just compensation has not been provided in the subject case. The only issue raised by petitioners is whether their property is being taken for a public use. The test set by this Court for whether a legislative public use determination is violative of the Fifth Amendment is stringent:

> " * * * Subject to specific constitutional limitations, *when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive.* In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia (citation omitted) or the States legislating concerning local affairs. (Citations omitted.) This principle admits of no exception merely because the power of eminent domain is involved. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one. (Citations omitted.)

Berman v. Parker, 348 U.S. 26, 32 (1954). (Emphasis added.)

The very limited scope of judicial review of legislative public use determinations was emphasized repeatedly by this Court in *Hawaii Housing v. Midkiff*, 467 U.S. 229 (1984):

> "There is, of course, a role for courts to play in reviewing a legislature's judgment of what constitutes a public use, even when the eminent domain power is equated with the police power. But the Court in *Berman* made clear that it is 'an extremely narrow' one. (Citation omitted.) The Court in *Berman* cited with approval the Court's decision in *Old Dominion Co. v. United States*, 269 U.S. 55, 66 (1925), which held that deference to the legislature's 'public use' determination is required 'until it is shown to involve an impossibility.' * * * In short, *the Court has made clear that it will not substitute its judgment for a legislature's judgment as to what constitutes a public use 'unless the use be palpably without reasonable foundation.'* (Citation omitted.)"
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> * * * *But where the exercise of the eminent domain power is rationally related to a conceivable public purpose, the Court has never held a compensated taking to be prescribed by the Public Use Clause.* (Citations omitted.)
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> * * * *When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings* – no less than debates over the wisdom of other

> kinds of socioeconomic legislation – *are not to be carried out in the federal courts.* * * * .

Hawaii Housing, 467 U.S. at 240-243. (Emphasis added.)

The Ohio Court of Appeals concluded that the City of Alliance's public use determination was based on public health considerations and therefore was not an abuse of discretion. Pet. App. pp. 12a, 15a. This ruling is consistent with this Court's statement that public health is a valid public purpose.

> "Public safety, public health, morality, peace and quiet, law and order – these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs. Yet they merely illustrate the scope of the power and do not delimit it. (Citations omitted.)"

Berman, 348 U.S. at 32.

Petitioners do not dispute that the purpose of the taking in this case was to support a hospital redevelopment project. Petitioners' argument essentially involves a claim that a properly stated rule of law has been misapplied. Such issues generally do not merit review by this Court. U.S. Supreme Court Rule 10. Moreover, the undisputed facts do not support an argument that the law was misapplied in this case.

B. The Transfer Of Property Taken By Eminent Domain To A Private Party Does Not Condemn The Taking As Having Only A Private Purpose.

The Ohio Court of Appeal's ruling, that a transfer of property taken by eminent domain to a private party does not preclude a public use determination, is also consistent with the relevant decisions of this Court. In this case, the City has entered an agreement whereby property taken by the City by eminent domain will be transferred to the Hospital for redevelopment. The *Berman* court has specifically held that the use of eminent domain to transfer property to a private party for redevelopment is constitutionally acceptable:

> "Once the object is within the authority of Congress, the right to realize that through the exercise of eminent domain is clear. *For the power of eminent domain is merely the means to the end.* (Citations omitted.) *Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area.* Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. (Citations omitted.) The public then may be as well or better served through an agency of private enterprise than through a department of government – or so the Congress might conclude. *We cannot say that public ownership is the*

> *sole method of promoting the public purposes of community redevelopment projects. * * * .*"

Berman, 348 U.S. at 33-34. (Emphasis added.)

The *Hawaii Housing* court also rejected the argument that it was improper to use eminent domain to take property for transfer to a private beneficiary:

> "The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose. The Court long ago rejected any literal requirements that condemned property be put into use for the general public. * * * In such cases, government does not itself have to use property to legitimate the taking; *it is only the taking's purpose, and not its mechanics, that must pass scrutiny under the Public Use Clause.*"

Hawaii Housing, 467 U.S. at 243-244. (Emphasis added.)

C. A State Legislature Is Entitled To The Same Judicial Deference As The Federal Legislature In Determining Whether A Taking Serves A Public Purpose.

The Ohio Court of Appeal's rejection of petitioners' argument that the Alliance Council is entitled to less deference than the United States Congress in making public use determinations is also consistent with the decisions of this Court. This issue was specifically addressed by the *Hawaii Housing* case as follows:

> "Similarly, the fact that a state legislature, and not the Congress, made the public use determination does not mean that judicial deference is less appropriate. Judicial deference is required because, in our system of government, legislatures are better able to assess what public purposes should be advanced by an exercise of the taking power. State legislatures are as capable as Congress of making such determinations within their respective spheres of authority. See *Berman v. Parker*, 348 U.S., at 32. Thus, if a legislature, state or federal, determines there are substantial reasons for an exercise of the taking power, courts must defer to its determination that the taking will serve a public use.
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> *Hawaii Housing*, 467 U.S. at 244.

II. THE STATE COURT'S RESOLUTION OF STATE QUESTIONS ARE NOT WITHIN THE JURISDICTION OF THIS COURT.

Petitioners raise a number of issues in their petition regarding the construction and application of provisions of the Ohio Constitution and Ohio statutes relating to eminent domain. The Ohio Court of Appeal's decisions regarding these issues amount at most to alleged erroneous constructions of state law by that state's court. This Court does not have jurisdiction to review the state court's decision of any such questions. *Neblett v. Carpenter*, 305 U.S. 297, 302 (1938); 28 U.S.C. § 1257.

CONCLUSION

For the above reasons, respondent respectfully requests the Court to deny the petition for a writ of certiorari.

Respectfully submitted,

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